Case 1:23-cv-01209-LJV Document 1 Filed 11/21/23 Page 1 of 10	
UNITED STATES DISTRICT COURT NOV 2.1 2023 Revised 07/07 WDNY	
WESTERN DISTRICT OF NEW YORK WESTERN DISTRICT OF NY KEVIN J. BECKER	
Name(s) of Plaintiffs Name(s) of Plaintiffs	
City of Buttalo Low Department -CV- City of Buttalo timen Resucces Name of Defendant or Defendants DISCRIMINATION COMPLAINT Devartment -CV- Lity of Buttalo timen Resucces Name of Defendant or Defendants	1 2 0 9-V
You should attach a copy of your original Equal Employment Opportunity Commission (EEOC) complaint , a copy of the Equal Employment Opportunity Commission decision , AND a copy of the " Right to Sue " letter you received from the EEOC to this complaint. Failure to do so may delay your case. Note: Only those grounds raised in the charge filed with the Equal Employment Opportunity Commission can be considered by the federal district court under the federal employment discrimination statutes.	
This action is brought for discrimination in employment pursuant to <i>(check only those that apply)</i> :	
Title VII of the Civil Rights Act of 1964, as codified, 42 U.S.C. §§ 2000e to 2000e-17 (amended in 1972, 1978 and by the Civil Rights Act of 1991, Pub.L.No. 102-166) (race, color, gender, religion, national origin). NOTE: In order to bring suit in federal district court under Title VII, you must first obtain a right to sue letter from the Equal Employment Opportunity Commission.	
 Age Discrimination in Employment Act of 1967, as codified, 29 U.S.C. §§ 621-634 (amended in 1984, 1990, and by the Age Discrimination in Employment Amendments of 1986, Pub.L.No. 99-592, the Civil Rights Act of 1991, Pub.L.No. 102-166). NOTE: In order to bring suit in federal district court under the Age Discrimination in Employment Act, you must first file charges with the Equal Employment Opportunity Commission. Americans with Disabilities Act of 1990, as codified, 42 U.S.C. §§ 12112-12117 (amended by the Civil Rights Act of 1991, Pub.L.No. 102-166). NOTE: In order to bring suit in federal district court under the Americans	bases Eddical
with Disabilities Act, you must first obtain a <u>right to sue letter</u> from the Equal Employment Opportunity Commission.	

JURISDICTION is specifically conferred upon this United States District Court by the aforementioned statutes, as well as 28 U.S.C. §§ 1331, 1343. Jurisdiction may also be appropriate under 42 U.S.C. §§ 1981, 1983 and 1985(3), as amended by the Civil Rights Act of 1991, Pub.L.No. 102-166, and any related claims under New York law.

	Idition to the federal claims indicated above, you may wish to include New York State as, pursuant to 28 U.S.C. § 1367(a).
	New York State Human Rights Law, N.Y. Exec. Law §§ 290 to 297 (age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics, marital status). **Cailed Ho admice to disability** **Cailed Ho admice to disability* **Cailed Ho admice to disability* **Cailed Ho admice to disability*
PAR	I IES
1.	My address is: 158 Calais St, Buffelo, NY (42)
	My telephone number is: 716 - 984 - 7191
2.	The name of the employer(s), labor organization, employment agency, apprenticeship committee, state or local government agency who I believe discriminated against me is/are as follows:
	Name: Butkalo Fire Jogannet
	Number of employees: $700 - 800$
	Address: 68 Court Street BUELLA, NY 14202
3.	(If different than the above), the name and/or the address of the defendant with whom I sought employment, was employed by, received my paycheck from or whom I believed also controlled the terms and conditions under which I were paid or worked. (For example, you worked for a subsidiary of a larger company and that larger company set personnel policies and issued you your paycheck).
	Name: <u>Gladys Herndon Hill-Hungan Resource</u>
	Address: 65 Niagorg St. Room 1100 Buttalo, 135, 14203
CLAI	MS /
4.	I was first employed by the defendant on (date):

As nearly as possible, the date when the first alleged discriminatory act occurred is:
As nearly as possible, the date(s) when subsequent acts of discrimination occurred (if any did):
I believe that the defendant(s)
a. Are still committing these acts against me. Are not still committing these acts against me. (Complete this next item only if you checked "b" above) The last discriminatory act against me occurred on (date)
(Complete this section only if you filed a complaint with the New York State Division of Human Rights)
The date when I filed a complaint with the New York State Division of Human Rights is
_ (estimate the date, if necessary) I filed that complaint in (identify the city and state):
The Complaint Number was:
The New York State Human Rights Commission did/did notissue a decision. (NOTE: If it did issue a decision, you must attach one copy of the decision to each copy of the complaint; failure to do so will delay the initiation of your case.)
The date (if necessary, estimate the date as accurately as possible) I filed charges with the Equal Employment Opportunity Commission (EEOC) regarding defendant's alleged discriminatory conduct is:
The Equal Employment Opportunity Commission did did not issue a decision. (NOTE: If it did issue a decision, you must attach one copy of the decision to each copy of the complaint; failure to do so will delay the initiation of your case.)
The Equal Employment Opportunity Commission issued the attached Notice of Right to Sue letter which I received on: 68/23/2023. (NOTE: If it

did issue a Right to Sue letter, you <u>must</u> attach one copy of the decision to <u>each</u> copy of the complaint; failure to do so will delay the initiation of your case.)

13.	I am complai	ning in this action of the foll	owing types of actions by the defendants:					
	a	Failure to provide me with process	reasonable accommodations to the application					
	b	Failure to employ me						
	c	Termination of my employ	ment					
	d	Failure to promote me						
e Failure to provide me with reasonable accommodations so I can perform the essential functions of my job								
	f	Harassment on the basis of	my sex					
	g	Harassment on the basis of unequal terms and conditions of my employment						
	h	lained about discrimination or harassment						
	i	Retaliation because I completing directed toward others	lained about discrimination or harassment					
	j	Other actions (please description) Market Charles L Failed to C	be) failed to amploy was aging on Palifical motor based on Palifical					
14.	Defendant's cotthat apply):	onduct is discriminatory with	respect to which of the following (check all					
	a R	ace	f Sexual Harassment					
	b C	color	g. Age Date of birth					
	c S	ex	hDisability					
	d R	eligion	Are you incorrectly perceived as being disabled by your employer?					
	e Na	ntional Origin	yes no					
15.	I believe that l defendant(s).	was not	intentionally discriminated against by the					

16.	I believe that the defendant(s) is/are is not/are not still committing these acts against me. (If you answer is that the acts are not still being committed, state when:
	and why the defendant(s) stopped committing these acts against
	you: They failed to complex me based
	CXG
17.	A copy of the charge to the Equal Employment Opportunity Commission is attached to this complaint and is submitted as a brief statement of the facts of my claim. (NOTE: You must attach a copy of the original complaint you filed with the Equal Employment Opportunity Commission and a copy of the Equal Employment Opportunity Commission affidavit to this complaint; failure to do so will delay initiation of your case.)
18.	The Equal Employment Opportunity Commission (check one): has not issued a Right to sue letter has issued a Right to sue letter, which I received on
19.	State here as briefly as possible the facts of your case. Describe how each defendant is involved, including dates and places. Do not give any legal arguments or cite any cases or statutes. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. (Use as much space as you need. Attach extra sheets if necessary.)
FOR	LITIGANTS ALLEGING AGE DISCRIMINATION
20.	Since filing my charge of age discrimination with the Equal Employment Opportunity Commission regarding defendant's alleged discriminatory conduct 60 days or more have elapsed less than 60 days have elapsed
FOR	LITIGANTS ALLEGING AN AMERICANS WITH DISABILITIES ACT CLAIM
21.	I first disclosed my disability to my employer (or my employer first became aware of my

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22.	The date on which I first asked my employer for reasonable accommodation of my disability is
23.	The reasonable accommodations for my disability (if any) that my employer provided to me are:
24.	The reasonable accommodation provided to me by my employer were/were noteffective.
includ	REFORE, I respectfully request this Court to grant me such relief as may be appropriate, ling injunctive orders, damages, costs and attorney's fees.

RESPONDENTS POSITIONAL STATEMENT

Case # 525-2022-02190

I am going to explain and discuss several facts concerning this case which are:

First and foremost, the fact of age discrimination is demonstrating by Dr. Santa Maria (neuro – psychologist) hired by the City of Buffalo to evaluate possible candidates for firefighter. Dr. Santa Maria mentions to me that concern about aging lower extremities. Specifically, he mentions my knees. I respond by stating that my knees are fine! This is the same response that I give to both the Fire Commissioner and the Human Resource Commissioner (February, 2022). They both ask about my knees at the appeal hearing that was moved up to benefit the defendant. Hearing was originally scheduled for later during week. Hearing was moved up by a phone call notice from Civil Service. The fact of the matter is that this is an adverse action by the defendant's based on pre- judging candidate without any experience on job.

Second fact is that I am a disabled Veteran. This is based on injury during service. I am considered to be in a protected class with regards to gaining employment. I think the city and civil service department committed an adverse action without realizing that I am a Veteran. I also did not realize that as a candidate for firefighter. I was eligible to receive extra points toward examination. I think it would have been 10 points.

Third factor is that the Neuro-psyche physician is a psychologist. Dr. Santa Maria is not an orthopedic surgeon! Why is he trying to evaluate me regarding my extremities? This also applies to both the Human Resource Commissioner and the Fire Commissioner. This is another factor of an adverse action by defendant.

The fourth factor is that the defendant's used arbitrary and capricious decision making regarding my physical and mental health. My physical health is that I am in better condition than 70-80 percent of current fire department. They seemed to be overly concerned about my age without indicating my age. They seemed to believe all of their critiques without any concern for disagreements. Specifically, I mentioned to them in written response. Dr. Santa Maria mentions anxiety and depression concerns. I had seen a psychologist at DENT neurology several years ago. It was never indicated by physician that I am unemployable??? This is another factor of an adverse action by defendant.

The fifth factor is that I requested a FOIL in writing at the Civil Service office. This was concerning wanting the names, addresses and candidates from the February 2021 firefighter class. My concern is that I would like to know if candidates lived outside city- and specifically the ages of the candidates. The defendant responded by via mail using a bunch of examples and stating they were not obliged to share information. This is another factor of an adverse action.

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Buffalo Local Office 300 Pearl St, Suite 450 Buffalo, NY 14202 (716) 431-5007 Website: www.eeoc.gov

DETERMINATION AND NOTICE OF RIGHTS

(This Notice replaces EEOC FORMS 161, 161-A & 161-B)

Issued On: 08/23/2023

To: Mr. Kevin J. Becker 158 Calais St WEST SENECA, NY 14210

Charge No: 525-2022-02190

EEOC Representative and email: STEPHANIE LITTLEHALE

Investigator

stephanie.littlehale@eeoc.gov

DETERMINATION OF CHARGE

The EEOC issues the following determination: The EEOC will not proceed further with its investigation and makes no determination about whether further investigation would establish violations of the statute. This does not mean the claims have no merit. This determination does not certify that the respondent is in compliance with the statutes. The EEOC makes no finding as to the merits of any other issues that might be construed as having been raised by this charge.

NOTICE OF YOUR RIGHT TO SUE

This is official notice from the EEOC of the dismissal of your charge and of your right to sue. If you choose to file a lawsuit against the respondent(s) on this charge under federal law in federal or state court, your lawsuit must be filed WITHIN 90 DAYS of your receipt of this notice. Receipt generally occurs on the date that you (or your representative) view this document. You should keep a record of the date you received this notice. Your right to sue based on this charge will be lost if you do not file a lawsuit in court within 90 days. (The time limit for filing a lawsuit based on a claim under state law may be different.)

If you file suit, based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission,

Maureen C. Kielt Kielt Signed by Maureen C.

Date: 2023.08.22 21:07:00 -04'00'

Maureen C. Kielt Director, Buffalo Local Office

EEOC Form 5 (11/09)								
Charge of Discrimination	Charge Presented To:	Agency(ies) Charge No(s):						
This form is affected by the Privacy Act of 1974. See enclosed Privacy Act	EEOC	525-2022-02190						
Statement and other information before completing this form.	FEPA							
New York State Division	Of Human Rights	and EEOC						
State or local Agency, if any								
Name (indicate Mr., Ms., Mrs.)	Home Phone	Year of Birth						
Mr. Kevin J. Becker	716-984-719							
Street Address								
158 Calais St								
WEST SENECA, NY 14210								
Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Co Against Me or Others. (If more than two, list under PARTICULARS below.)	mmittee, or State or Local Govern	ment Agency That I Believe Discriminated						
Name	No. Employees, Mem	bers Phone No.						
Buffalo Fire Department	201 - 500 Emplo	yees						
Street Address	· · · · · · · · · · · · · · · · · · ·							
68 Court Street 65 Niagara Square								
BUFFALO, NY 14202								
Name	No. Employees, Mem	Phone No.						
Street Address City, State a	nd ZIP Code							
Calais St ST SENECA, NY 14210 ed is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated nst Me or Others. (If more than two, list under PARTICULARS below.) Ealo Fire Department 1. Address Court Street 65 Niagara Square FFALO, NY 14202 City, State and ZIP Code City, State and ZIP Code DATE(S) DISCRIMINATION TOOK PLACE Earliest Latest 01/01/2022 02/28/2022 PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)): was in the process of employment with the Respondent. I was in the process to be employed as a Firefighter. I scored an 89 on the written amination, passed the physical abilities test, and was qualified to move onto the next step in the employment process. I went for a psychological aluation on or about January 2022. The professional conducting the psychological evaluation instead began assessing my physical fitness and late and the I have a aging knees. Following this evaluation, I was not considered to continue the employment process. There was an appeal date at I attended even after the Respondent if I was qualified for employment to which I answered yes, both mentally and physically. Even still, was not considered to continue the employment process. There was an appeal date at I attended even after the Respondent if I was qualified for employment to which I answered yes, both mentally and physically. Even still, was not considered to continue the employment process of om my age, in willful								
Age	01/01/2022	02/28/2022						
I was in the process of employment with the Respondent. I was in the process to be employed as a Firefighter. I scored an 89 on the written examination, passed the physical abilities test, and was qualified to move onto the next step in the employment process. I went for a psychological evaluation on or about January 2022. The professional conducting the psychological evaluation instead began assessing my physical fitness and indicated that I have aging knees. Following this evaluation, I was not considered to continue the employment process. There was an appeal date that I attended even after the Respondent changed the dates on very short notice. This gave me little time to perfect my rebuttal. During the appeal process, I was asked directly by the Respondent if I was qualified for employment to which I answered yes, both mentally and physically. Even still, I was not considered to continue the employment process. I believe the psychological evaluation was discriminatory based on my age, in willful violation of the Age Discrimination in Employment Act of 1967.								
I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise	NOTARY – When necessary for State	and Local Agency Requirements						
I was not considered to continue the employment process. I believe the psychological evaluation was discriminatory based on my age, in willful violation of the Age Discrimination in Employment Act of 1967.								
I declare under penalty of perjury that the above is true and correct.	I declare under penalty of perjury that the above is true and correct. of my knowledge, information and belief.							
Digitally Signed By: Mr. Kevin J. Becker	SIGNATURE OF COMPLAINANT							
11/24/2022	SUBSCRIBED AND SWORN (month, day, year)	TO BEFORE ME THIS DATE						
Charging Party Signature								

Case 1:23-cv-01209-LJV Document 1 Filed 11/21/23 Page 10 of 10 CIVIL COVER SHEET 23 CV

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the ruppose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

purpose of initiating the civil	docker sheet. (SEE IVSTRO)	CIIONS ON NEXT PAGE C	or mus re	Mus.)							
I. (a) PLAINTIFES (b) County of Residence	of First Listed Plaintiff	Becker Feir	2	DEFENDAN CIFY DO	R	B	ret	Life	y Bret Yu Dre	La Ru	Lale Costor
(-) ·	OI FIRST LISTED PIAINTIIF O	ASES)		County of Reside NOTE: IN LANI THE TR		(IN U	.S. PLAI	NTIFF CASES	ONLY) THE LOCATION	N OF	 -
(c) Attorneys (Firm Name,	Address, and Telephone Numb	en PRO SC		Attorneys (If Kno	wn)	-					
II. BASIS OF JURISD	ICTION (Place an "X" in C	One Box Only)		TIZENSHIP OF		INCI	PAL	PARTIES			
☐ 1 U.S. Government				(For Diversity Cases On	<i>ly)</i> PTF	DE	CF .		and One Box	: for Defende PTF	ant) DEF
Plaintiff	(U.S. Government	Not a Party)	Citize	en of This State	0 1	0		corporated or Proof Business In 7		1 4	1 4
☐ 2 U.S. Government Defendant	☐ 4 Diversity (Indicate Citizensh	up of Parties in Item III)	Citize	n of Another State	5 2			corporated and of Business In		5	5
				n or Subject of a reign Country	O 3		3 Fo	reign Nation		□ 6	□ 6 ————
IV. NATURE OF SUI			~ः मी संद ्वास	RECEITURE/PENAIST	V				of Suit Code D		
☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument	PERSONAL INJURY 310 Airplane 315 Airplane Product Liability	PERSONAL INJUR 365 Personal Injury - Product Liability 367 Health Care/	Y 🗆 62	5 Drug Related Seizure of Property 21 USC 88 0 Other		3 422 A 3 423 V		8 USC 158 val	375 False (376 Qui Ta 3729(a	Claims Act am (31 USC a))	!
□ 150 Recovery of Overpayment & Enforcement of Judgment □ 151 Medicare Act □ 152 Recovery of Defaulted Student Loans (Excludes Veterans) □ 153 Recovery of Overpayment of Veteran's Benefits	☐ 320 Assault, Libel &	Pharmaceutical Personal Injury Product Liability 368 Asbestos Personal Injury Product Liability PERSONAL PROPER 370 Other Fraud 371 Truth in Lending	TY -	LABOR Fair Labor Standards Act	0	820 C 830 P 835 P 840 T SOC	Copyright Patent Patent - A New Drug Trademar	Abbreviated g Application k EURITY	410 Antitro 430 Banks 450 Comm 460 Deport 470 Racket	and Banking erce tation teer Influence of Organizationer Credit Sat TV	g ced and ions
160 Stockholders' Suits 190 Other Contract 195 Contract Product Liability 196 Franchise REAL PROPERTY	Product Liability 360 Other Personal Injury 362 Personal Injury - Medical Malpractice CIVIL/RIGHTS	☐ 380 Other Personal Property Damage ☐ 385 Property Damage Product Liability	□ 740 □ 75	Act Relations Relations Railway Labor Act Family and Medical Leave Act Other Labor Litigation		J 863 D J 864 S J 865 R	DIWC/DI SSID Titl RSI (405(WW (405(g)) e XVI	Exchar 890 Other S 891 Agricu 893 Environ 895 Freedo	nge Statutory Ac Iltural Acts nmental Mat	etions ters .
210 Land Condemnation 220 Foreclosure 230 Rent Lease & Ejectment 240 Torts to Land 245 Tort Product Liability 290 All Other Real Property	☐ 440 Other Civil Rights ☐ 441 Voting ☐ 442 Employment ☐ 443 Housing/ Accommodations ☐ 445 Amer. w/Disabilities - Employment	Habeas Corpus: 463 Alien Detainee 510 Motions to Vacate Sentence 530 General	79	Employee Retirement Income Security Act IMMIGRATION Naturalization Applicat	- 1 - 1	870 T 0 871 II		S. Plaintiff lant) rd Party	☐ 896 Arbitra ☐ 899 Admin Act/Re	istrative Pro rview or App y Decision tutionality o	neal of
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VII. REQUESTED IN COMPLAINT:	CHECK IF THIS UNDER RULE 2	IS A CLASS ACTION	DI	EMAND \$				CK YES only DEMAND:	if demanded in	n complair • No	nt:
VIII. RELATED CASI IF ANY	(See instructions):	JUDGE 5ch	ROE	der		DOC	KETN	UMBER 🛫	525-J	022	-02214
DATE 11-20-	202	SIGNATURE OF ATT	ORNEY	F RECORD	Z	A	OP 1				
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RECEIPT # AM	MOUNT	APPLYING IFP		JUDGE				MAG. JUD	GE HK	$\mathcal{Q}_{\underline{\underline{\underline{\underline{\underline{\underline{\underline{\underline{\underline{\underline{\underline{\underline{\underline{\underline{\underline{\underline{\underline{\underline$	